IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 7141 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJENDRAKUMAR PRABHATSINH PARMAR

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 7141 of 2003

MR JB PARDIWALA for Petitioner No. 1

MR VM PANCHOLI, LD. ADDL.PUBLIC PROSECUTOR for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE A.L.DAVE

Date of decision: 11/09/2003

ORAL JUDGEMENT

Rule. Mr. V.M. Pancholi, learned Additional Public Prosecutor waives service for the State.

2. The applicant came to be arrested by Police in connection with CR No.I-85 of 2003 registered with Anand Rural Police Station, for offence punishable under Section 307 of Indian Penal Code. He therefore applied for bail before the Sessions Court, Camping at Anand, by preferring Criminal Misc. Application No. 363 of 2003. The said application came to be allowed by virtue of an order dated 29th August, 2003, passed by the learned Additional Sessions Judge, Kheda, Camping at Anand. The applicant was ordered to be released on bail on depositing Rs. 25,000/- in cash and executing bond and furnishing solvent surety for like amount. While allowing Criminal Misc. Application No. 363 of 2003, the learned Additional Sessions Judge imposed at Sr.No.5, a condition to the effect that the amount of Rs. 25,000/- ordered is to be deposited in cash besides his personal bond and solvent surety, shall, in event of any breach of any of the conditions, stand automatically forfeited and the Court shall recover Rs. 25,000/- from his surety as well. A further condition was also put at Sr.No.6 that bail granted to the applicant would stand automatically cancelled if a written intimation is received by the Investigating Officer about breach of any of the conditions imposed by the Court, and the Investigating Officer shall forthwith arrest the applicant. The applicant is aggrieved by imposition of these conditions and hence, this application for modification of the order.

3. Learned Advocate Mr. Pardiwala appearing for the applicant submitted that imposition of condition for deposit of cash of Rs. 25,000/- is too harsh a condition and it amounts to, in substance, denial of bail. He is also aggrieved by the fact that by virtue of condition No.5, the amount is ordered to be forfeited on breach of any of the conditions. The condition leaves no scope for any enquiry and adjudication on question whether in fact breach is committed or not. He therefore urged that direction for deposit of Rs. 25,000/- may be deleted and condition No.5 may be modified to the extent that applicant be directed to abide by law etc..

3.1 According to Mr. Pardiwala, condition No.6 narrated above exposes the applicant the risk of false implication and harassment, since anybody can make an application in writing and without verifying the truth in it, by virtue of the above condition, the bail would stand cancelled and the Investigating Officer would be

left with no alternative, but to arrest the applicant. He submitted that this condition is therefore harsh and prone to misuse.

4. Learned Additional Public Prosecutor Mr. Pancholi opposes to this application. According to him, Court has imposed these conditions in exercise of judicial discretion and in facts of the case, and therefore they may not be interfered with.

5. Having regard to the rival side contentions raised before this Court, it is amply clear that by virtue of the order impugned herein the applicant is required to deposit Rs. 25,000/- in cash in addition to executing personal Bond and furnishing Solvent Surety. Condition No.5 provides that amount of Rs. 25,000/deposited by the applicant would stand forfeited automatically in the event of breach or violation of any of the conditions. Imposition of condition for deposit of amount coupled with this direction leaves no scope for any inquiry or adjudication on question whether there is, in fact, any breach or violation of any of the conditions.

6. Apart from that, if Section 441 of Cr.P.C is seen it does not contemplate cash surety. Likewise, Sec. 445 of Cr.P.C provides that Court may permit such person required to execute bond with or without sureties, to deposit money in lieu of executing such bond except where bond is for good behaviour. Thus, under this provision the person required to execute bond may request for acceptance of cash in lieu of bond and the Court may or may not accede to such request. Differently put, option is with such person whether to execute bond or to deposit cash after obtaining permission of Court. The question of exercise of discretion by Court comes in to play thereafter i.e. only if and when such option of cash deposit is sought to be exercised by such person. This is because Sec. 441 does not contemplate cash surety at all.

6.1 Calcutta High Court in Abdul Gani & ors. Vs. Emperor, reported in 1947 Criminal Law Journal 773 had occasion to consider this provision (Sec. 513 of Cr.P.C 1998, equivalent to Section 445 of the Code) and ruled that demand of cash surety is illegal and set aside that part of the order.

6.2 Likewise, Mysore High Court in State of Mysore Vs. H. Venkatarama Kotaiyah, reported in 1968 Criminal Law Journal 696 also, after considering Section 499 and

Sec. 513 of Old Code (equivalent to Sec. 441 and 445 of Cr.P.C.) and judgements of various other High Courts held that law does not empower the Court to insist on cash deposit to be made by accused.

6.3 Hon'ble Supreme Court in Sandeep Jain V. National Capital Territory of Delhi, reported in AIR 2000 SC 714 did not appreciate the imposition of such cash deposit and observed that it is improper.

6.4 This Court in Bhikhabhai Udesinh Darbar V. State of Gujarat, reported in 1998 (1) GLR 315 held that imposition of condition of cash deposit and payment thereof to victim is not in accordance with law.

7. In the instant case on hand before this Court, cash deposit is insisted upon in addition of personal Bond and surety. Additionally, the same is ordered to be forfeited forthwith on mere allegation of breach of violation of any of the conditions!! No hearing to the other side, no opportunity to explain, no adjudication on question whether in fact such condition is breached or violated !!

8. Under the circumstances, condition for deposit of Rs. 25,000/- and it's forfeiture can not be permitted to stand. The condition is beyond the scope of Sections 441 and 445 of Criminal Procedure Code, apart from being harsh, unjust and violative of principles of natural justice as it leaves no scope of any inquiry, audience to accused or adjudicate on main question whether he has violated any of the conditions and if so, whether accused is responsible for it and whether any action is required to be taken.

9. So far as condition No.6, it is very clear that by imposition of this condition, the Court has left no discretion or scope for any enquiry or satisfaction of either the Investigating Officer or any judicial authority to ascertain truthfulness of the allegation or intimation of violation of any of the conditions that may be made in writing to the Investigating Officer. As a consequence of this condition No.6 on any such intimation, howsoever frivolous it may be, the Investigating Officer would be required to arrest the applicant. This is a pre-empted and anticipatory exercise of power under Section 439(2) without any hearing being given to the accused and therefore the risk of misuse of this clause highlighted by learned Advocate Mr. Pardiwala calls for a considerate consideration.

With howsoever good intention the condition may have been imposed, it violates principles of natural justice. This condition though unwittingly and indirectly, invests the complainant or any other person giving such intimation to Police with powers of cancellation of bail! Such condition may result in negation of bail even after grant of bail by a competent Court. It may lead to unnecessary and unwarranted harassment to accused, multiplicity of work of investigating agency and Court. This condition therefore cannot be permitted to stand.

10. In view of the above discussion following order is passed.

10.1 That part of the order requiring deposit of cash amount of Rs. 25,000/- and condition No.5 imposed by the learned Additional Sessions Judge in order dated 29th August, 2003 in Criminal Misc. Application No. 363 of 2003 stands deleted.

10.2 Condition No.6, is modified to read that in the event of any violation of any of the conditions imposed by the Sessions Court while releasing the applicant on bail, if it is intimated to the Investigating Officer, he may approach the Court for issuance of appropriate warrant of arrest.

11. The application is accordingly allowed. Rule is made absolute. Direct service permitted.

(A.L.Dave, J.)

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